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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 JOSHUA SPENCER HILL,
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13 Petitioner,
14 v.
15 KIM HOLLAND, Warden,
16 Respondent.

Case No. ED CV 15-00542 FMO (AFM)

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the records
18 on file herein, the Report and Recommendation of United States Magistrate Judge
19 as well as the Objection in Part filed by respondent. The Court has engaged in a
20 *de novo* review of those portions of the Report to which objections have been filed.
21 The Court accepts the findings and recommendations of the Magistrate Judge and
22 adds that, as noted by respondent's objection, the failure of the Petition to name a
23 custodian provides a further ground for dismissal. *See Stanley v. California*
24 *Supreme Court*, 21 F.3d 359 (9th Cir. 1994). With regard to respondent's other
25 objection that the Petition should be dismissed with prejudice, this objection is
26 overruled. For Grounds Two through Five of the Petition, petitioner could arguably
27 reassert these allegations in a section 1983 action, even though they do not state a
28 habeas claim. Even as to Ground One, petitioner could conceivably cure the

1 deficiency by alleging that his plea was involuntary. In addition, the failure to
2 name a custodian as respondent could be subject to cure in a subsequent petition.
3 Accordingly, dismissal without prejudice is appropriate.

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5 DATED: October 15, 2015

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7 _____/s/_____
8 FERNANDO M. OLGUIN
9 UNITED STATES DISTRICT JUDGE
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